

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 1:12-CR-323-WSD-ECS
EDWARD K. KIM,	:	
Defendant.	:	

**RESPONSE TO THIRD-PARTY CLAIM TO FORFEITED PROPERTY &
MOTION TO AMEND FORFEITURE ORDER**

COMES NOW the United States and files this response to the Third-Party Claim to Forfeited Property & Motion to Amend Forfeiture Order filed by Samuel Markham Conder on January 31, 2013. (Doc. 20-1). The United States respectfully requests that any amended Order of Forfeiture in the instant case be deferred for the reasons noted below.

I. Background

On September 25, 2012, the United States filed an indictment against the Defendant in this case, Edward Kim. (Doc. 1). The indictment charged Kim with several federal offenses, and contained a forfeiture provision alleging that, upon conviction of certain offenses, the United States would seek the forfeiture of one .38 caliber Smith and Wesson revolver, serial number D328969, and assorted ammunition seized therewith

(collectively the "Seized Property") pursuant 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c). (Doc. 1).

On December 11, 2012, Kim changed his plea to guilty in the criminal case, and subsequently agreed to a Consent Preliminary Order of Forfeiture forfeiting the Seized Property to the United States. (Docs. 15, 17). After the Court entered a Preliminary Order of Forfeiture forfeiting the Claimed Property to the United States, the United States, pursuant to 21 U.S.C. § 853(n)(1) and Fed. R. Crim. P. 32.2(b)(6)(C), began providing notice of its intent to forfeit the Claimed Property beginning on January 9, 2013. (Doc. 21). The United States also sent direct notice to known potential claimants. Conder subsequently filed a third-party claim to the Claimed Property by filing a Third-Party Claim to Forfeited Property & Motion to Amend Forfeiture Order. (Docs. 19-20). The United States now issues this response to Conder's motion.

II. Argument and Citation of Authority

In Conder's Motion, Conder claims an interest in the Claimed Property. (Docs. 19-20). The United States does not object to the third-party claim filed by Conder, does not Contest Conder's alleged interest in the Claimed Property, and does not object to the request for an amended order of forfeiture recognizing such an interest. Before such an order

may be issued, however, it is necessary that the criminal case be closed, and that any other potential claimants to the Claimed Property be allowed an opportunity to assert any interests they may have to the Claimed Property.

A. The entrance of an amended Order of Forfeiture should be deferred until after the criminal case is closed.

The entrance of any amended Order of Forfeiture in the instant case should be deferred until after the criminal case is closed because the United States has an interest in ensuring that potential evidence only be released after the criminal case has been concluded. For this reason, the United States would like to defer the entrance of a Final Order of Forfeiture recognizing Conder's interest until after sentencing in this case, currently scheduled for February 20th, 2013.

B. The entrance of an amended Order of Forfeiture should be deferred until after the time has run in which potential claimants may submit claims to the Claimed Property.

The entrance of any amended Order of Forfeiture in the instant case should be deferred until after the time has run in which potential claimants may submit claims to the Claimed Property because this will ensure a full and fair disposition of the rights to the Claimed Property. After the Consent Preliminary Order of Forfeiture was entered in this case, the United States published notice of the intended forfeiture on an

official government internet site (www.forfeiture.gov) for at least 30 consecutive days beginning on January 9, 2013, in accordance with 21 U.S.C. § 853(n)(1) and Fed. R. Crim. P. 32.2(b)(6)(C). (Doc. 21). Any potential claimant receiving notice of an intended forfeiture through publication may within 30 days of the last day of publication file a claim to the property intended to be forfeited. 21 U.S.C. § 853(n)(2). Because the last day of publication of the Claimed Property on www.forfeiture.gov occurred on February 7, 2013, other potential third-party claimants have until March 9, 2013, to file a claim to the Claimed Property. Id.

III. Conclusion

Because the criminal case is not yet closed, and because the time has not yet run in which other potential claimants may submit claims to the Claimed Property, the United States would ask that the filing of an amended Order of Forfeiture be deferred until 30 days after the criminal case is closed, or until 30 days after the final date on which potential third-party Claimants may file claims to the Claimed Property, whichever occurs later. After the criminal case has been closed, and after the time for other potential third-party claimants to submit claims to the Claimed Property has run, the United States will submit to the Court a proposed amended Order of Forfeiture

recognizing Conder's alleged interests, assuming no other third-party Claimants come forward in the interim.

This 12th day of February, 2013.

Respectfully submitted,

SALLY QUILLIAN YATES
UNITED STATES ATTORNEY

/s/ Dahil D. Goss

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CERTIFICATE OF SERVICE

I hereby certify that I have prepared the foregoing **RESPONSE TO THIRD-PARTY CLAIM TO FORFEITED PROPERTY & MOTION TO AMEND FORFEITURE ORDER** in compliance with N.D.Ga. Local Rule 5.1 using Courier New 12 point type and have this day electronically filed the document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the attorneys of record.

Additionally, I have this day caused a copy of the foregoing to be served on the following entities by placing a copy of the same in an envelope with adequate postage affixed thereon and sent first class mail to the following addresses:

Samuel Conder
1615 Victoria Chase
Cumming, GA 30041

This 12th day of February, 2013.

/s/ Dahil D. Goss
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